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IN THE

Supreme Court of the United States

BANK OF AMERICA CORP. ET AL.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

WELLS FARGO & CO., ET AL.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR ASIAN AMERICANS ADVANCING JUSTICE |AAJC, LATINOJUSTICE PLRDEF, AND OTHER CIVIL RIGHTS AND IMMIGRANTS' RIGHTS GROUPS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE

Amici are a broad coalition of civil rights, immigrants' rights, housing advocacy, labor organizations and local, community-based groups that serve Asian American, Latino and immigrant clients.[1] A full list of *amici* is provided in Appendix A.

SUMMARY OF ARGUMENT

Amici submit this brief to explain why preserving the ability of cities to enforce the Fair Housing Act (FHA) is vital to achieving the Act's purpose. The FHA was enacted against a historical backdrop of laws and practices, such as alien land laws, officially sanctioned redlining, and restrictive covenants excluding minorities and immigrants from owning property and homes. The FHA recognized that eradicating these practices, and prohibiting other forms of housing exclusion, is key to achieving equality of opportunity and integrated neighborhoods that reflect the diversity of America.

Today, the FHA's goals remain more important than ever, and FHA suits by cities are a necessary safeguard. The nation is more racially and ethnically diverse now than at any time in its history, and that diversity is only expected to accelerate in coming decades. *Amici* represent and serve clients that fuel this demographic trend: Asian American, Latino, and immigrant families that are the fastest growing segments of the American population, yet who continue to lag behind in homeownership rates. These families disproportionately reside in cities and other

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[1] No party or its counsel wrote or helped write this brief, or gave money intended to fund its writing or submission, see S. Ct. R. 37. Blanket permission to write briefs is filed with the Court.

urban areas. This makes cities a key testing ground for the nation's commitment to fair housing and for redressing barriers to homeownership for new and emerging minority communities.

This case illustrates the challenges the nation confronts as millions of new minority and immigrant families enter the housing market and also confirms why cities play an integral role in enforcing FHA guarantees. The recent foreclosure and subprime loan crisis devastated cities in particular, and led cities across the nation, to bring FHA suits against banks for inequitable loan practices, such as redlining and reverse redlining, that harmed minority residents. Unfair lending practices may be more subtle and less blatantly exclusionary than the overt discrimination of the past, but lending disparities are no less harmful to minority and immigrant families.

Currently, homeownership remains a crucial gateway to equality of opportunity, operating as the primary means for families to build economic security and intergenerational wealth. But virtually all families need a mortgage loan to purchase a home. Because home lending controls access to home ownership, the systematic lending disparities challenged by the City of Miami and other cities under the FHA operate as new and powerful barriers to fair housing and full social and economic equality for minority and immigrant families. Identifying and deterring unfair lending practices is crucial to avoid entrenchment of structural inequality for emerging Asian American, Latino, and immigrant communities that represent a rapidly growing share of the American population.

The city FHA lawsuits highlight troubling disparities in the lending process. Minority applicants lack equal access: minority applicants are more likely to be

turned down for home loans, or to receive subprime or predatory loans, than similarly situated white applicants. Minority immigrant families face further burdens. They confront additional barriers, such as language fluency and lack of credit history that compound the adverse effects of inequitable loan practices. Few forms of inequality have such enduring consequences for families and communities. The average term of a mortgage loan is 15-30 years, and a home loan typically constitutes the single largest financial commitment that families will make for their future. Lack of access to prime lending opportunities means that families will be economically encumbered and face higher risks of foreclosure for decades.

Cities, like the City of Miami in this case, are uniquely well situated to enforce the FHA against systematic practices like unfair lending. Cities have the resources and access to data to discern patterns of unequal treatment and potential exclusion. Respondent banks, by contrast, seek to place the burden of remedying systematic discrimination on individual victims. But individuals face daunting obstacles in trying to match the enforcement power of cities and towns. Individuals do not have ready access to information about loans or practices that apply across a neighborhood or city as a whole. And individual victims often lack attorneys—let alone the same legal firepower—as cities to pursue FHA suits against large corporations, like the national banks in this case.

Amici urge the Court to ensure that the FHA's protections remain robustly available as demographic shifts make fair housing a continued priority. Historical experience confirms that housing discrimination against minority and immigrant families is a persistent risk that impedes equality of opportunity for

generations. As the nation looks forward, minority and immigrant families—particularly Asian American and Latino families—increasingly represent the new and diverse face of America. In response to this growing diversity, the nation cannot afford to lessen its commitment to fair housing. Preserving the ability of cities and towns to protect minority and immigrant residents is important to achieve the FHA's goals and for families and communities to succeed and thrive now and in the future.

ARGUMENT

I. THE FAIR HOUSING ACT'S PROTECTIONS REMAIN VITAL FOR FAST-GROWING ASIAN, LATINO, AND IMMIGRANT POPULATIONS SEEKING TO PURCHASE HOMES

A. Exclusionary housing practices are a persistent risk for minority and immigrant communities.

Fears about the exclusion of minority and immigrant families from homeownership—and the need to be vigilant about exclusionary practices—are not alarmist. They are rooted in the history that led to the enactment of the FHA, and core to the statute's design and aims. As early as the nineteenth century, racially restrictive covenants were used nationwide as a tool to prevent people of color from purchasing homes in white neighborhoods.[2] These exclusionary tools were also targeted at immigrants, particularly Chinese and Japanese immigrants in the West. One of the earliest legal challenges to a racially restrictive covenant, for example, involved a Chinese immigrant

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[2] *See Shelley v. Kraemer*, 334 U.S. 1, 4 (1948).

in California who was denied equal access to property ownership.[3]

Alien Land Laws were also widely used to discourage Asians and other immigrants from settling in the United States by limiting the ability of foreign-born residents to own land and property.[4] These laws even sought to prevent families with long-term ties to the country from owning and holding property for the benefit for their citizen children.[5] These exclusionary practices were widely accepted and *celebrated*. So much so that in 1937, a leading national magazine would award "shield[s] of honor" to communities who successfully kept "the wrong kind of people" from buying homes or living in their neighborhoods and towns.[6]

These patterns continued and extended to new programs like federally supported home loans. Given pervasive patterns of past discrimination, it is not surprising that Asian and Latino and other immigrant communities clustered in specific "ethnic enclaves."[7]

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[3] *See Gandolfo v. Hartman*, 49 F. 181 (C.C.D. Cal. 1892).

[4] *See* Polly J. Price, *Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm*, 43 Am. J. Legal Hist. 152, 173 (1999).

[5] *See Oyama v. California*, 332 U.S. 633, 647 (1948) (concluding that California's Alien Land Law unconstitutionally barred a Japanese parent from purchasing and recording property in his citizen child's name).

[6] *See* U.S. Comm'n on C.R., *Understanding Fair Housing* 4 (Clearinghouse Publication 42, Feb. 1973).

[7] Cecilia Ayón, *Economic, Social, and Health Effects of Discrimination on Latino Immigrant Families* 10 (Migration Policy Institute, Sept. 2015), http://www.migrationpolicy.org/research/economic-social-and-health-effects-discrimination-latino-immigrant-families ("Latino immigrants tend to live in ethnic

The segregation and isolation of immigrant communities was artificial, yet appraisers and lenders began using the racial and ethnic composition of communities to control lending decisions. Communities with high immigrant populations, such as communities with many "Mexicans," were ranked high risk, and lenders began "redlining" those neighborhoods, literally circling on a map the areas where loans would not be available.[8]

These practices meant that residents of minority and immigrant neighborhoods had limited, if any, access to federally-backed mortgage loans. That historic exclusion has had enduring consequence for *amici's* communities. Homeownership is often a stepping stone to the middle-class and a key means of

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enclaves, segregated from the mainstream community. This segregation may result from housing discrimination or immigrants' own choice to live in communities where they have connections or otherwise feel safe."); John Iceland, *Residential Segregation: A Transatlantic Analysis*, Migration Policy Institute (Sept. 2014), http://www.migrationpolicy.org/research/residential-segregation-transatlantic-analysis ("While a common perception is that minorities self-segregate, segregation occurs for a number of reasons, including housing market discrimination and decisions on the part of the majority population about where to live."); Maude Toussaint-Comeau & Sherrie L. W. Rhine, Ethnic Immigrant Enclaves and Homeownership: A Case Study of an Urban Hispanic Community 5 (Federal Reserve Bank of Chicago, Dec. 2000), https://www.chicagofed.org/~/media/others/region/cedric/papers/cca-2000-6-pdf.pdf ("[D]iscriminatory practices in the housing and credit markets may prevent some members of a minority ethnic/ racial group or immigrants (e.g., with a distinctive foreign accent, color, culture etc.) from achieving their desired ownership goals").

[8] *See* Nat'l Comm'n on Fair Hous. and Equal Opportunity, The Future of Fair Housing 8 (2008), http://www.civilrights.org/publications/reports/fairhousing/future_of_fair_housing_report.pdf.

familial wealth accumulation and intergenerational wealth transfer. Disparities in homeownership also have a profound impact on educational opportunity and civic engagement. For families, unequal lending makes a huge difference: they are less likely to live in integrated neighborhoods, less likely to achieve economic security, and less able to use and pass on the family home as an asset to fund their children's future.[9] A single lending decision, years earlier, could still fuel inequality for the children of minority and immigrant families for decades into the future.

B. Enforcing the FHA is critical to avoid lending disparities that contribute to significant gaps in homeownership rates for emerging communities.

The FHA was enacted to prohibit continued patterns of housing discrimination and to prevent the resulting residential segregation and structural inequality flowing from exclusionary practices. That goal is even more compelling today. As a nation, America is more diverse than ever. Asian Americans and Latinos are the two fastest growing groups in the United States. By 2065, Asian Americans and Latinos are projected to collectively represent 38% of the U.S. population, with much of that growth fueled by immigration.[10] Nearly 75% of Asian American adults

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[9] *See* Aleatra P. Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 Wm. & Mary Bus. L. Rev. 601, 638-39 (2015).

[10] Pew Research Center, Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065 10 (2015), http://www.pewhispanic.org/files/2015/09/2015-09-28_modern-immigration-wave_report.pdf.

and 50% of Latino adults are foreign born.[11] Further, immigrant communities represent an expanding share of the American population. "Foreign-born Americans and their descendants have been the main driver of U.S. population growth, as well as of national racial and ethnic change" for decades, and by 2065 immigrants are estimated to make up 18% (nearly one-fifth) of the U.S. population.[12]

The FHA's work is not done for the growing communities that *amici* serve. The inequalities of the past have not disappeared with respect to crucial measures such as the ability to purchase a family home. Homeownership rates for Latinos stands at only 45.1% nationwide, more than 25 percentage points below the rate for Caucasian U.S. residents.[13] Homeownership rates for Asian Americans are also lower at 53.7% nationwide, nearly 17 percentage points lower than or Caucasian U.S. residents.[14]

Immigrants (i.e. foreign born residents) are also less likely to be homeowners. In 2008, for example, only 53% of immigrant-headed households owned their homes, compared to 70% of households headed by

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[11] *See generally*, Pew Research Center, Rise of Asian Americans, (2012), http://www.pewsocialtrends.org/files/2012/06/SDT-The-Rise-of-Asian-Americans-Full-Report.pdf and Jens Manuel Krogstad & Mark Hugo Lopez, Pew Research Center, Hispanic Nativity Shift: U.S. births drive population growth as immigration stalls (2014), http://www.pewhispanic.org/2014/04/29/hispanic-nativity-shift/.

[12] *Id.* at 23.

[13] Robert R. Callis & Melissa Kresin, *Residential Vacancies and Homeownership in the Second Quarter 2016* 9 (U.S. Census Bureau, 2016), http://www.census.gov/housing/hvs/files/currenthvspress.pdf.

[14] *Id.*

native-born residents.[15] While more recent data suggest that gap is narrowing,[16] significant disparities continue to exist among immigrant households based on citizenship status. The homeownership rate for non-citizen immigrant households is 32 percentage points lower than that of naturalized U.S. citizen households.[17] Lower rates of homeownership also exist for immigrants within racial and ethnic groups. For example, a 2008 Pew Study found that while 44.7% of foreign-born Latinos were homeowners, while 53.6% of native-born Latinos were homeowners.[18]

Troubling lending disparities contribute to the gap in homeownership rates. Recent studies and data confirm that people of different races got different mortgages even if their financial situations are similar. Controlling for credit score and a wide array of other underwriting factors, researchers still find

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[15] Deyanira Del Rio, *Mortgage Lending and Foreclosures in Immigrant Communities: Expanding Fair Housing and Fair Lending Opportunity Among Low Income and Undocumented Immigrants* 4 (Kirwan Institute, 2010), http://kirwaninstitute.osu.edu/FairHousing_FairCredit/delrio_merge.pdf.

[16] Anna Brown & Renee Stepler, *Statistical Portrait of the Foreign-born Population in the United States Table* 38 (Pew Research Center, 2016), http://www.pewhispanic.org/2016/04/19/statistical-portrait-of-the-foreign-born-population-in-the-united-states/#fb-current-homeownership (showing that 50.8% of immigrant-headed households that owned their homes, as compared to 65.3% of native-born residents).

[17] Edward N. Trevelyan et al., *Home Ownership Among the Foreign-Born Population: 2011* 2 (U.S. Census Bureau, Jan. 2013), http://www.census.gov/prod/2013pubs/acsbr11-15.pdf.

[18] Rakesh Kochar et al., *Through Boom and Bust: Minorities, Immigrants and Homeownership*, The Pew Hispanic Center (May 12, 2009), http://www.pewhispanic.org/2009/05/12/through-boom-and-bust/.

disturbing racial disparities. For example, a recent working paper by the National Bureau of Economic Research found that, even after controlling for key mortgage risk factors, Latino applicants were approximately 30% more likely and Asian American applicants approximately 6.5% more likely than borrowers as a whole to receive a high-interest mortgage which leads to increased lending costs and creates a greater future risk of foreclosure.[19]

Minorities are also less likely to be approved for mortgage loans. Latino applicants have significantly higher loan denial rates than white borrowers.[20] Data from Massachusetts, for example, shows that Latino borrowers were twice as likely to have their mortgage applications rejected compared with whites.[21] Asian Americans also experience higher rates of loan denials, particularly within specific segments of the Asian American population. At the lowest income levels, for example, Asian Americans face higher rates of mortgage application denial than any other ethnic or racial group.[22] Asian Americans of Taiwanese, Indian, Hmong and Korean descent also are face particularly high loan denial rates, equal to or exceeding the rates for Latino and African-American applicants.[23]

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[19] Patrick Bayer et al., *Race, Ethnicity and High-Cost Mortgage Lending*, Nat'l Bureau of Economic Research, Working Paper No. 20762 (2014), 30 http://www.nber.org/papers/w20762.

[20] Federal Reserve, *The 2014 Home Mortgage Disclosure Act Data*, Federal Reserve Bulletin, Nov. 2015, at 14-15, http://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

[21] *Id.*

[22] Marsha Courchane et al., *Borrowers from a Different Shore: Asian American Outcomes in the US Mortgage Market*, 28 J. Housing Econ. 76, 84 (2015).

[23] *Id.* at 88.

Banks are not required to disclose lending data on the immigration-related characteristics of loan applicants and recipients, making it harder to analyze lending disparities for immigrant household.[24] However, evidence suggests that immigrant households also disproportionately receive subprime or higher cost home loans. Research confirms a strong correlation between areas with large immigrant populations, for example, and high concentrations of high-cost mortgage loans[25] and higher foreclosure rates.[26]

Immigrant communities are also vulnerable to abusive loan tactics because of cultural and language barriers. Immigrants, particularly new immigrants, may not be familiar with commercial loan practices and may not be able to identify high risk, predatory loans. Language barriers may also prevent immigrants from understanding loan terms or accessing information about their rights under the FHA and other anti-discrimination and fair credit laws. Higher percentages of immigrants also lack established credit scores, limiting access to lending opportunities, and placing immigrant households at enhanced risk for predatory and high-cost mortgage loans.[27]

Eliminating lending disparities and enforcing the FHA is a priority for *amici's* communities. In America, home equity is still the primary source of long-term

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[24] Del Rio, *supra* note 15, at 4-5.

[25] Del Rio, *supra* note 15, at 6.

[26] Kochar et al., *supra* note 18.

[27] Andrew I. Schoenholtz & Kristin Stanton, *Reaching the Immigrant Market: Creating Homeownership Opportunities for New Americans* 2 (Fannie Mae Foundation, 2001), http://www.fanniemaefoundation.org/programs/pdf/rep_immigrant.pdf.

economic security for families.[28] Furthermore, the ability to purchase homes in neighborhoods of choice helps Asian American, Latino, and immigrant families achieve what all American families seek: better educational opportunities for their children, better health outcomes, and better job and career opportunities.[29] These social and economic benefits extend beyond individual families to cities and towns with fast-growing Asian American, Latino, and immigrant populations.

The harms of exclusion are similarly experienced by communities as a whole. When families are marginalized in the home lending market, or obtain high-cost loans only to lose homes through foreclosure, the devastating effects are widespread. As cities have explained in recurring FHA lawsuits challenging unfair lending practices, broader communities are harmed when minority and immigrant families have been targeted for subprime or predatory loans, resulting in concentrated foreclosures that have gutted and sometimes destroyed entire neighborhoods.[30]

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[28] *See* U.S. Dep't of Housing & Urban Development, *Homeownership and its Benefits, Urban Policy Brief No. 2* (Aug. 1995), https://www.huduser.gov/portal//Publications/txt/hdbrf2.txt; *see also* Robert Denk, *Homeownership, Financial Flexibility, and Wealth*, Nat'l Assoc. of Home Builders 1 (July 17, 2006), http://nahbclassic.org/fileUpload_details.aspx?contentTypeID=3&contentID=60818&subContentID=63348.

[29] *See generally* Del Rio, *supra* note 16 (discussing the barriers to fair housing and fair lending opportunity faced by immigrants in the United States).

[30] *See Mayor of Baltimore v. Wells Fargo Bank*, N.A., 677 F. Supp. 2d 847, 849 (D. Md. 2010) (asserting that "Wells Fargo target[ed] the city's [ ] vulnerable minority neighborhoods

II. BARRING SUITS BY CITIES WILL HINDER ENFORCEMENT OF THE FHA AND LEAVE EMERGING COMMUNITIES VULNERABLE TO UNFAIR LENDING AND OTHER SYSTEMATIC FORMS OF HOUSING DISCRIMINATION

A. The watchdog role of cities is especially important for minority and immigrant communities.

As explained above, cities experience the impact of unfair housing practices directly and have actively sought to enforce the FHA. During and after the most recent foreclosure and sub-prime loan crises, for example, cities brought multiple lawsuits to attack unfair and discriminatory loan practices. Along with federal and state enforcement actions, these lawsuits played a key role in unearthing and remedying unfair lending practices that targeted minority communities.[31]

Respondent banks, however, seek to limit FHA enforcement to federal and state actions and private lawsuits, brought by individual victims or fair housing organizations, alone. Essentially, banks seek to remove cities as a layer of protection and eliminate city suits to enforce FHA guarantees. But cities play a

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[which] led to a disproportionately high rate of foreclosures in the City's African-American communities"); *City of Memphis v. Wells Fargo Bank*, N.A., No. 09-2857-STA, 2011 U.S. Dist. LEXIS 48522, at 2 (W.D. Tenn. May 4, 2011) (stating that Wells Fargo targeted African-American mortgage borrowers, which led to a disproportionally high number of foreclosures in predominately African-American neighborhoods).

[31] *See generally* Christina Rexrode, *The New Thorn in the Side of Big Banks*, Wall St. J., Aug. 2, 2016 (providing that major cities are suing banks under the Fair Housing Act).

unique and irreplaceable role in enforcing the FHA for two related reasons.

First, housing discrimination, even systematic forms of exclusion, are *localized*: they are based on practices that affect and harm specific communities and neighborhoods. Because of the local nature of the impact, cities and towns have the best on-the-ground vantage point to catch and police discrimination as it occurs and before more harm results. Like the City of Miami in this case, other cities were also able to identify discriminatory patterns of lending, such as reverse redlining, from local effects, such as high rates of minority homeowners being forced into foreclosure. Cities because of their oversight responsibilities had a direct view into the lending problem and compelling reason to act.

The foreclosures in minority and high immigrant population neighborhoods led to a decline in property value not only for foreclosed properties, but also neighboring properties. Cities raised less property tax revenue despite community needs increasing.[32] Foreclosures also led to a record number of vacant homes, which became a magnet for crime and homelessness.[33] As cities and towns struggled to tackle these cascading problems, they had to divert funds from other programs and services, including those that minority and immigrant residents relied upon.[34] While

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[32] *See* Raymond Brescia, *Subprime Communities: Reverse Redlining, The Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Mortgage Crisis*, 2 Alb. Gov't L. Rev. 164, 169 (2009).

[33] *Id.*

[34] *See generally* Alana Semuels, *Who Can Go After Banks for the Foreclosure Crisis?*, The Atlantic, May 3, 2016 (providing city lawsuits argue that lending practices targeting minorities

eventually, the entire nation responded to the wave of foreclosures hitting American families, cities served a sentinel role in identifying the problem and the contributing factors like unfair lending. And unlike state and federal officials with broader responsibilities, cities had an immediate incentive to protect their residents, enforce the FHA, and stem the harm to their neighborhoods and communities.

Second, the watchdog role of cities is especially important for communities residing in urban areas. Asian American, Latino, and immigrant communities are growing nationally, but that growth is concentrated in cities. One-third of the Asian-born population in the United States lives in just three metro areas—Los Angeles, greater New York, and the San Francisco metro region,[35] and more than 40% of Latinos live in just ten metro areas.[36] Immigrant populations are also highest in urban areas. Data from the last census shows that nearly 40% of the U.S. immigrant population lives in just five metro areas.[37] This demographic trend towards urban residence extends nationwide. Over the past twenty years,

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deprived cities of tax revenue while making them cover foreclosure expenses).

[35] *See* Jie Zong et al., *Asian Immigrants in the United States*, Migration Policy Institute (Jan. 6, 2016), http://www.migrationpolicy.org/article/asian-immigrants-united-states.

[36] *See* Anna Brown, Mark Hugo Lopez, *Ranking Latino Population's in the Nation's Metropolitan Areas*, Pew Research Center (Aug. 29, 2013), http://www.pewhispanic.org/2013/08/29/iv-ranking-latino-populations-in-the-nations-metropolitan-areas/.

[37] Jill H. Wilson, Audrey Singer, *Immigrants in 2010 Metropolitan America: A Decade of Change*, Brookings (Oct. 13, 2011), https://www.brookings.edu/research/immigrants-in-2010-metropolitan-americaa-decade-of-change/

immigrant communities have been relocating to new cities—in areas like the South—that have not traditionally had large immigrant populations.[38] Miami, for example, has over 2.2 million immigrant residents, one of the highest populations in the nation.[39]

Amici's communities benefit from the protective and responsive role of cities. They represent far greater shares of the population in certain cities than in states as a whole. Many cities recognize the importance of growing Asian American, Latino, and immigrant communities, and have responded with a network of efforts to support those communities and ensure equal access to housing and other foundational civil rights. Across the nation, for example, cities have enacted innovative language access laws, created agencies whose mission is protection of immigrant residents, and have set up community taskforces to focus on housing rights for Asian American and Latino residents.[40] Many *amici* organizations also work

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[38] *See* Aaron Terrazas, *Immigrants in New-Destination States*, Migration Policy Inst. (Feb. 8, 2011), http://www.migrationpolicy.org/article/immigrants-new-destination-states ("[T]he immigrant population more than doubled in 19 states, many of which had little prior experience with the foreign born.").

[39] *See U.S. Immigrant Population by Metropolitan Area*, Migration Policy Inst. (last visited Sept. 29, 2016), http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-metropolitan-area.

[40] *See e.g.*, Ricardo Gambetta & Zivile Gedrimaite, *Municipal Innovations in Immigrant Integration: 20 Cities, 20 Good Practices* 18, 25 (2011) (citing programs for immigrant residents developed by cities, including Boulder, Colorado, Columbus, Ohio, San Francisco, California and Washington, DC for creating equal access language services and programs for its residents); White House Task Force on New Americans, Report on

closely with local governments in their areas, and routinely alert and work with local officials to enforce equal housing protections.

Federal and state officials, because of their broader oversight responsibilities, cannot be as responsive to the needs of emerging local communities. Cities and towns provide frontline FHA protection because of their local perspective and direct connection to residents. Local governments are uniquely well positioned to recognize problems like redlining in an immigrant community, or targeting of Asian Americans or Latinos for predatory loans in specific neighborhoods, and to seek effective FHA redress to protect vulnerable local communities.

B. Private lawsuits are not an effective substitute for city enforcement actions.

Eliminating the ability of cities to bring remedial FHA lawsuits leaves only one mechanism to address localized housing discrimination and exclusion: private lawsuits seeking relief for individual victims or harmed organizations. But private lawsuits are not an adequate enforcement tool—or deterrent to systematic housing discrimination—for several reasons.

First, in many cases, it will be difficult to detect patterns of unfair treatment and exclusion. Unlike cities that have access to broader data, most private individuals lack information about how similarly situated individuals of different races or backgrounds are treated. Most loan applicants, for example, will not have information about the loan terms offered to

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Strengthening Communities by Welcoming All Residents 5 (April 2015) (citing Federal Programs that assist cities in creating access to housing for Limited English Proficiency individuals).

similar applicants. Government enforcement actions can rely on tester-data, a method largely unavailable to individuals.[41]

Individuals lack similar means to confirm the existence of discrimination or disparate treatment. Furthermore, the complexity of many housing-related transactions, such as home lending, makes the identifying source of unfair practices even more difficult. Placing the burden of detection on immigrant families is especially perverse. Immigrant families are already disproportionately vulnerable to predatory lending because of language barriers and lack of familiarity with banking and real estate practices. Yet, the banks urge a statutory reading that places the burden of enforcement on families already ill-equipped to protect themselves.

Second, even if exclusionary practices have been identified, the practical barriers to private FHA suits are high. Victims of predatory lending often live precariously, close to the financial margin. By the time families realize their mortgage loan is a problem, they may already be on the brink of bankruptcy or foreclosure. By then, their main focus will be on immediate needs, such as providing for their family or

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[41] For example, in 2013 the Consumer Financial Protection Bureau (CFPB) sent undercover testers to BanCorp South branches to ask about receiving mortgage loans. The CFPB found that bank employees treated African-American testers worse than Caucasian testers with similar credit qualifications *See* Daniel Dodd-Ramirez et al., *Redlining: CFPB and DOJ Action Requires BancorpSouth Bank to Pay Millions to Harmed Consumers*, Consumer Fin. Prot. Bureau (June 29, 2016), http://www.consumerfinance.gov/about-us/blog/redlining-cfpb-and-doj-action-requires-bancorpsouth-bank-pay-millions-harmed-consumers/.

securing a place to live, not investigating or pursuing FHA remedies. The need for legal help from an attorney is also a substantial barrier. Families struggle to get legal assistance even to avoid foreclosure. Expecting families to have the time and drive—when facing personal crisis—to find an attorney to give guidance on pursing a complicated, data-driven fair lending claim under the FHA is unreasonable.

The organizations dedicated to helping families confront these barriers daily. *Amici* community groups and other legal aid organizations lack the same legal resources as cities to investigate and pursue FHA actions. *Amici* community organizations already struggle to meet the day-to-day needs of clients, which range from urgent immigration-related crises to access to health care and other basic services. Other forms of housing discrimination, such as steering and refusal to show rental and home properties continue to persist.[42] As real estate prices become more expensive, particularly in the urban centers where Asian Americans, Latinos, and immigrants live, these communities are vulnerable to housing loss and are being pushed out of neighborhoods through gentrification and unfair housing practices.[43] Community organizations

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[42] *See generally* U.S. Dep't of Housing & Urban Development, *Housing Discrimination Against Racial and Ethnic Minorities 2012: Executive Summary* (2013), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf (discussing the forms of housing discrimination that persist in the United States).

[43] *See, e.g.*, Nat'l Coal. for Asian Pac. Am. Cmty. Dev. & Council for Native Hawaiian Advancement, *Asian American & Pacific Islander Anti-Displacement Strategies* (2016), http://nationalcapacd.org/sites/default/files/u19/anti_displacement_strategies_report.pdf (providing data on displacement and gentrification to show that gentrification and the resulting displacement has

attempting to respond to all of these concerns and would have to divert efforts from other crucial programs if the enforcement role of cities were eliminated under the FHA and the burdens of enforcing statutory protections shifted to private victims.

Third, private actions on behalf of injured victims—even if they could be successfully brought—will not serve the same deterrent function as enforcement suits by cities. Private litigants generally are not entitled to broad relief that would prevent and remedy harm to other individuals and communities. As a result, private suits will not be an equally effective vehicle for pursuing the types of systematic reform and largescale relief that city FHA actions can achieve.[44]

Deterrence value is also an important consideration given the difficulty and uncertainty involved in challenging systematic forms of housing discrimination and exclusion. The costs of litigating a fair lending case, for example, including discovery, expert reports, and statistical analysis, are high. Securitized lending and opaque lending structures often make it difficult to identify the entities involved in the lending process and responsible for particular practices.

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dramatically changed Asian American and Pacific Islander neighborhoods).

[44] *See* Compl., *City of Oakland v. Wells Fargo Bank*, No. 15-cv-04321 (N.D. Cal. Sept. 21, 2015); Compl., *City of Los Angeles v. Bank of America et al.*, No. 2:13-cv-09046-PA-AGR (C.D. Cal. Dec. 6, 2013); Amended Compl., *Mayor & City Council of Baltimore v. Wells Fargo Bank et al.*, No. 1:08-cv-00062-JFM (D. Md. Oct. 21, 2010); Amended Compl., *City of Memphis et al. v. Wells Fargo Bank et al.*, No. 2:09-cv-02857-STA-dkv (W.D. Tenn. Apr. 7, 2010).

Moreover, challenges to systematic practices often require breaking new ground, as new forms of housing discrimination and exclusion arise. Predatory lending claims, for example, are still a relatively recent development, and there is not much precedent to establish the requirements for inequitable lending claims.

Even government lawsuits have to take the practical costs of litigation—and uncertain benefit—into account. In 2012, the Justice Department, the Department of Housing and Urban Development (HUD) and 49 state attorney generals reached a landmark $25 billion settlement with the nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses.[45] The settlement included FHA claims, and in explaining why further litigation to obtain full relief was not pursued, federal and state officials explained that: "Litigation takes time, it carries substantial risks, it expends significant resources. While legal cases drag on, homeowners in desperate need of relief are left to watch and wait for an uncertain outcome."[46]

The same factors pose far more formidable obstacles for private litigants lacking the resources of the Department of Justice or state attorney general offices. Moreover, even if individual victims have the resources, fortitude, and will to challenge systematic practices, the deterrence value and likely impact of private litigation is limited. The array of law firms

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[45] *See Joint State-Federal Mortgage Servicing Settlement FAQ*, Joint State-Federal National Mortgage Servicing Settlements, (last visited Oct. 5, 2016) http://www.nationalmortgagesettlement.com/faq.

[46] *Id.*

and legal firepower supporting Respondent Banks in this case illustrates the practical problem for private litigants. Challenging systematic practices under the FHA is not an easy task, and the uncertain prospects of individual relief will not adequately deter businesses and corporations from seeking to profit from unfair and exclusionary practices. Given these realities, local governments provide a crucial layer of protection. Cities and towns help to level the playing field by ensuring that the threat of FHA lawsuit, even for the largest corporations, is an effective deterrent to new and continued forms of housing discrimination and exclusion.

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Amici are here to warn the Court about rolling back FHA enforcement tools. The face of America is changing, and cities are on the frontlines of that change. Asian American, Latino, and immigrant communities are growing, and these families, like other American families, need fair and equal access to housing and homeownership. Cities that are responsive to their increasing diverse residents provide an important layer of frontline protection to ensure that millions of new families will not be left behind or excluded from the core components of the American Dream, including owning a family home. For the communities that *amici* serve, this case presents far more than a technical statutory or standing question, eliminating enforcement suits by cities presents a real threat to emerging communities still vulnerable to housing discrimination and exclusion.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX A

IDENTIFICATION OF *AMICI*

Asian Americans Advancing Justice | AAJC is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by working for civil and human rights and empowering Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. Advancing Justice | AAJC advances its mission through advocacy, public policy, public education, and litigation. Advancing Justice | AAJC has maintained a strong interest in informing courts and policy makers about the growing populations of Asian Americans in the United States and their access to core rights like housing. Advancing Justice | AAJC also has a long-standing history of serving immigrant and language minority communities and protecting those groups from discrimination.

LatinoJustice PRLDEF founded in 1972 as the Puerto Rican Legal Defense and Education Fund champions an equitable society. Our continuing mission is to protect and defend the constitutional rights of the greater pan-Latino community in the United States and Puerto Rico, and to promote justice and equality for all Latinos. During our 44 year history, LatinoJustice has successfully litigated numerous cases challenging multiple forms of discrimination, including fair housing, education, employment language rights, redistricting and voting rights. In recent years, LatinoJustice has successfully challenged discriminatory housing practices affecting Latino immigrant tenants' rights to secure and maintain affordable housing.

Howard University School of Law Civil Rights Clinic is a student-oriented law school program based

in Washington D.C., which litigates on behalf of indigent clients in civil rights and social justice cases. The Civil Rights Clinic follows the tradition of Howard University School of Law, which embodies legal activism by addressing justice and injustice in America. The Clinic also serves as a clearinghouse for information on the civil rights struggle. Students represent pro se plaintiffs in a range of civil rights matters from housing discrimination to constitutional violations. Thus, the efforts of cities to prevent banks from pursuing discriminatory lending practices that adversely impact immigrant and minority communities and the diversity within our country is central to the mission of the Clinic and Howard University School of Law.

The Advocates for Human Rights is an independent, nongovernmental, nonprofit organization dedicated to promoting and protecting internationally recognized human rights, including the rights to housing and to freedom from discrimination. The Advocates for Human Rights provide free legal services to asylum seekers in the Upper Midwest and conduct research and policy advocacy on the human rights of non-citizens in the United States. The Advocates for Human Rights has a strong interest in ensuring that the United States provides adequate accountability mechanisms to protect victims of housing violations and to prevent abuses.

Asian Americans Advancing Justice – Asian Law Caucus was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing Justice – ALC is part of a national affiliation of Asian American civil rights groups, with offices

in Los Angeles, Chicago, Atlanta and Washington DC. Advancing Justice – ALC has a long history of protecting and advocating for immigrant communities through direct legal services, impact litigation, community education, and policy work, including the field of housing rights.

Asian Americans Advancing Justice – Atlanta (formerly Asian American Legal Advocacy Center or AALAC) is the first non-profit law center dedicated to Asian immigrants and refugees (Asian Americans) in the Southeast. The center's goal is to engage, educate and empower under-represented Asian Americans to greater civic participation. Asian Americans Advancing Justice – Atlanta is one of five independent organizations that make up the national Asian Americans Advancing Justice.

Asian Americans Advancing Justice – Chicago (AAAJ-Chicago) is a nonprofit organization that works to empower the Asian American community through advocacy, education, research, and coalition-building. AAAJ – Chicago fights for laws and policies that promote social, economic, and political equity for the Asian American community as a whole.

Asian Americans Advancing Justice – Los Angeles (Advancing Justice – LA) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI). Founded in 1983 as the Asian Pacific American Legal Center, Advancing Justice – LA serves more than 15,000 individuals and organizations every year. Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, Advancing Justice – LA focuses on the most vulnerable members of Asian American and NHPI communities while also building a strong

voice for civil rights and social justice. Advancing Justice – LA provides assistance in several areas of law, including housing rights and affordable housing access.

The Asian American Legal Defense and Education Fund (AALDEF) is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. The issues presented in this matter are central to AALDEF's mission. In the cities where many Asian Americans reside, discriminatory home-ownership financing injures Asian Americans as well as the whole community. Thus, the role of cities in enforcing the Fair Housing Act to create and maintain integrated communities is critical in the fight against discriminatory practices.

Asian Pacific American Labor Alliance, AFL-CIO (APALA) is the first and only national organization of Asian American and Pacific Islander (AAPI) workers, most of who are union members, and allies advancing worker, immigrant and civil rights. Since it was founded, APALA has played a unique role in addressing the workplace issues of the 660,000 AAPI union members and in serving as the bridge between the broader labor movement and the AAPI community. Backed with strong support of the AFL-CIO, APALA has more than 20 chapters and pre-chapters and a national office in Washington, D.C.

Asian Pacific American Network of Oregon (APANO) is a statewide grassroots organization, uniting Asians and Pacific Islanders to achieve social justice. APANO works towards a society where all members have equal access to core rights like housing,

without fear of discrimination or exclusion. APANO's community organizing efforts include educating Asian American immigrants on housing rights and helping communities fight for affordable housing.

Association of Asian Pacific Community Health Organizations is a national association of community health centers who serve medically underserved Asian Americans, Native Hawaiians and Pacific Islanders.

Caring Across Generations is a national movement of families, caregivers, people with disabilities, and aging Americans working to transform the means of care in this country. By harnessing the power of online and grassroots organizing and culture change work, Caring Across Generation is shifting how the nation values caregiving and calling for policy solutions that enable all individuals to live well and age with dignity.

The Center for Popular Democracy Action is a national organization that builds organizing power to transform the local and state policy landscape through deep, long-term partnerships with leading community-based organizing groups nationwide. Center for Popular Democracy Action strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda.

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) is an organization with local and statewide presence in California and also nationally recognized. CHIRLA's mission is to advance the human, civil rights, and full integration of New Americans and their children into the fabric of society. CHIRLA advocates on behalf of the community

through policy and advocacy, organizing, education and community building.

The Community Justice Project is a nonprofit law firm in Miami, FL which represents community organizations advocating for racial justice in Miami. Our clients are leaders in communities of color here in Miami which have suffered greatly through the predatory lending practices challenged in this case. Low-income Miami neighborhoods, such as Little Haiti where we are located, have seen homeownership dramatically reduced and neighborhoods shifted to absentee investors. This is harmful to these neighborhoods, our larger community and City as a whole. The harm is far larger than anything done to any individual and needs the comprehensive enforcement and resources of the City.

DC Commission on Asian and Pacific Islander Affairs Advocacy was appointed by the Mayor and was established to advise the Mayor, the Council, and the Director of the Mayor's Office on Asian and Pacific Islander Affairs (MOAPIA), and the public on the views and needs of the Asian American and Pacific Islander (AAPI) communities in the District of Columbia.

Florida Alliance for Consumer Protection (FLACP) is a statewide, not-for-profit organization that was formed to address consumer protection and tenants' rights issues. It is comprised of individuals who provide legal services to consumers and who act as advocates for consumers in the public policy arena.

Florida Immigrant Coalition, Inc. (FLIC) is a statewide alliance of more than 62 member organizations, including farmworkers, students, service providers, grassroots organizations and legal advocates,

who come together for the fair treatment of all people, including immigrants.

Many Languages One Voice is a movement organization, building power with immigrant communities in the District of Columbia.

National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of nearly seventy-five state and local Asian Pacific-American bar associations and nearly 50,000 attorneys who work in solo practices, large firms, corporations, legal services organizations, nonprofit organizations, law schools, and government agencies. Since its inception in 1988, the National Asian Pacific American Bar Association has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans.

National Asian Pacific American Women's Forum (NAPAWF) is the country's only national organization building a movement for social justice and human rights for Asian American and Pacific Islander (AAPI) women and girls in the United States.

National Center for Lesbian Rights is a national legal non-profit organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (LGBT) individuals and their families. Since 1994, NCLR's Immigration Project has provided free legal assistance to thousands of LGBT immigrants nationwide through, among other services, direct representation of LGBT immigrants in impact cases and individual asylum cases and advocacy for immigration and asylum policy reform. NCLR

has published papers on the topic of gender and sexual orientation-based violence and discrimination, and has filed briefs both as amicus and as counsel of record, regarding asylum claims based on rape, domestic violence, and other forms of gender and sexual orientation-based persecution before various federal courts. In addition, NCLR has advocated at the federal level for equitable housing policy for LGBT people, and was active in pushing for passage of the groundbreaking Equal Access Rule issued by the U.S. Department of Housing and Urban Development in 2012 and the 2016 amendment to that rule ensuring that transgender individuals are treated in accordance with their gender identity when seeking shelter in facilities receiving funding from HUD.

The National Coalition for Asian Pacific American Community Development (National CAPACD) is the first national advocacy organization dedicated to addressing the housing, supportive service, community, and economic development needs of diverse and growing Asian Americans and Pacific Islander (AAPI) communities. National CAPACD's member-based network includes more than 100 community-based organizations spanning 19 states and the Pacific Islands, implementing innovative affordable housing, community development and community organizing strategies to improve the well-being of low-income AAPIs. National CAPACD was established to support nonprofit organizations working in economically distressed AAPI communities where AAPIs struggle with issues such as high housing costs, housing overcrowding, and low homeownership rates.

National Council of Asian Pacific Americans (NCAPA) is a coalition of thirty-five national Asian

Pacific American organizations around the country. Based in Washington D.C., NCAPA serves to represent the interests of the greater Asian American (AA) and Native Hawaiian Pacific Islander (NHPI) communities and to provide a national voice for the communities' concerns.

The National Immigration Law Center (NILC) is one of the leading organizations in the U.S. exclusively dedicated to defending and advancing the rights of low-income immigrants. NILC engages in impact litigation and policy advocacy to protect and advance the rights of immigrants and immigrant communities. NILC has been at the forefront of advocating for innovative policy solutions to address immigrants' access to health care, workers' rights, immigration enforcement reforms, and legal status for immigrant youth. NILC also seeks to protect immigrants from housing discrimination and to promote fair access to housing opportunities for immigrant communities.

National Korean American Service and Education Consortium (NAKASEC) was founded in 1994 during a political turning point for Korean Americans. The LA Civil Unrest of April 29, 1992 and the subsequent anti-immigrant wave in Congress, precipitated by Prop 187, posed tremendous challenges to Korean Americans as people of color, working families and immigrants. The state of America at that time led a group of local grassroots community based organizations to come together to form NAKASEC with the purpose of projecting a national progressive voice on major civil rights and immigrant rights issues and promoting the full participation of Korean Americans with the greater goal of building a national movement for social change. Today, NAKASEC is

based in Los Angeles, CA and Annandale, VA, and has affiliates in Los Angeles and Orange County (Korean Resource Center) and in Chicago (Korean American Resource & Cultural Center). NAKASEC and its affiliates form a strong and unique organizing network that forwards a holistic empowerment model.

NETWORK Lobby is a Catholic leader in the global movement for justice and peace. Network Lobby educates, organizes, and lobbies for economic and social transformation.

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "The enactment, enforcement, and preservation of laws and regulations that protect civil rights and individual liberties for all." Consistent with our Principles and Resolutions, NCJW joins this brief.

OCA - Asian Pacific American Advocates is a national nonprofit, membership-driven civil rights organization based in Washington, D.C. with over 100 chapters and affiliates across the country. OCA is dedicated to advancing the social, political, and economic well-being of Asian American Pacific Islanders (AAPI). Reducing barriers to full economic access for AAPIs remains a core priority for OCA.

OneAmerica is a statewide immigrant advocacy organization with members in immigrant and refugee communities throughout Washington State, including

community residents and their families from Asia and the Pacific Islands, Africa, and Latin America.

Service Employees International Union (SEIU) is an international labor organization representing approximately two million working men and women in the United States and Canada employed in the private and public sectors. Many of SEIU's members are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in the United States. Many of SEIU's members have mixed-status families.

South Asian Bar Association of North America provides a vital link between South Asian lawyers and the South Asian community across North America.

Southern Poverty Law Center (SPLC) has provided pro bono civil rights representation to low income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination. SPLC has litigated and advocated to enforce the civil rights of immigrants, including cases and advocacy under the Fair Housing Act. SPLC has an interest in this case because affirmation of the lower appellate court's ruling will protect SPLC's constituents and clients.